

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

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| BENJAMIN BOYNTON, JR., | : | CIVIL ACTION NO. 1:16-CV-449 |
| | : | |
| Petitioner | : | (Chief Judge Conner) |
| | : | |
| v. | : | |
| | : | |
| WARDEN TAMMY FERGUSON, <i>et al.</i>, | : | |
| | : | |
| | : | |
| Respondents | : | |
| | : | |

ORDER

AND NOW, this 26th day of June, 2017, upon consideration of the report (Doc. 9) of Magistrate Judge Karoline Mehalchick, recommending the court dismiss the petition (Doc. 1) for writ of habeas corpus by *pro se* petitioner Benjamin Boynton, Jr. (“Boynton”) as an unauthorized second or successive petition pursuant to 28 U.S.C. § 2244(b)(2), without prejudice to Boynton’s right to seek preauthorization from the Third Circuit Court of Appeals to file same under 28 U.S.C. § 2244(b)(3), and the court noting that Boynton objects to the report (Doc. 10), and, following a *de novo* review of the contested portions of the report, see Behar v. Pa. Dep’t of Transp., 791 F. Supp. 2d 383, 389 (M.D. Pa. 2011) (citing Sample v. Diecks, 885 F.2d 1099, 1106 n.3 (3d Cir. 1989); 28 U.S.C. § 636(b)(1)(C)), and applying a clear error standard of review to the uncontested portions, see Cruz v. Chater, 990 F. Supp. 375, 376-78 (M.D. Pa. 1999), the court being in agreement with Judge Mehalchick that Boynton’s instant petition is an unauthorized second or successive petition filed without leave of the Third Circuit Court of Appeals, see 28 U.S.C. § 2244(b)(2)-(3), and finding Judge

Mehalchick's analysis to be thorough, well-reasoned, and fully supported by the record, and further finding Boynton's objection to be without merit,¹ it is hereby ORDERED that:

1. The report (Doc. 9) of Magistrate Judge Mehalchick is ADOPTED.
2. The petition (Doc. 1) for writ of habeas corpus by petitioner Benjamin Boynton, Jr. ("Boynton") is DISMISSED without prejudice to Boynton's right to request leave from the Third Circuit Court of Appeals to pursue a second or successive petition pursuant to 28 U.S.C. § 2244(b)(2) and (b)(3).
3. The court finds no basis to issue a certificate of appealability. See 28 U.S.C. § 2253(c); R. GOVERNING § 2254 CASES R. 11(a).
4. The Clerk of Court is directed to CLOSE this case.

/S/ CHRISTOPHER C. CONNER

Christopher C. Conner, Chief Judge
United States District Court
Middle District of Pennsylvania

¹ Boynton contends that Judge Mehalchick erred in examining his petition without first ordering service of the petition on respondents and requesting an answer therefrom. (See Doc. 10 ¶¶ 4-6). Judge Mehalchick complied to the letter with the Rules Governing 2254 Cases, which require a court to "promptly examine" petitions upon receipt and to dismiss any petition from which it "plainly appears . . . that the petitioner is not entitled to relief." R. GOVERNING § 2254 CASES R. 4. Only if the petition is not dismissed must the court order a respondent to answer same. Id. Judge Mehalchick did not err by conducting a preliminary review of Boynton's petition without soliciting an answer from respondents.